



APPLICATION GRANTED

SO ORDERED

VERNON S. BRODERICK

U.S.D.J. 5/25/2023

Defendant shall respond to Plaintiff's complaint by July 24, 2023.

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel

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May 24, 2023

VIA ECF

Honorable Vernon S. Broderick
District Court Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *John Zippo v. City of New York et al.*, 23-CV-00865 (VSB)

Your Honor:

I am a Senior Counsel in the Office of the Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and attorney for defendant City of New York ("City") in the above referenced matter. For the reasons set forth below, defendant City respectfully requests an enlargement of time until July 24, 2023 to answer or otherwise respond to the complaint. This is the City's third request for an enlargement of time to respond to the complaint and plaintiff's counsel, Rob Rickner, consents to this request.¹

By way of background, plaintiff brings this action, pursuant to 42 U.S.C. § 1983, alleging *inter alia* deliberate indifference to prisoner safety and/or medical needs, negligence, and intentional infliction of emotional distress. More specifically, plaintiff alleges that in January 2022 and December 2022, while he was in New York City Department of Correction ("DOC") custody, he was threatened and assaulted by other inmates due to defendants' purported actions, or lack thereof, and that the defendants purportedly failed to provide him with adequate protection. As a result, plaintiff claims that he sustained serious physical injuries, including broken bones in his face, a broken hand, brain injury, and bruises all over his body. In addition to the City, plaintiff also identifies DOC officers Captain Smart, Captain Davis, Captain Jeffries, Captain Matheus, CO Washington, CO Valdez, CO Lee, CO Tittle, CO Vasquez, and a number of John Does as defendants.

¹ Plaintiff counsel indicated to the undersigned that surrogates court counsel has been retained and the estate for plaintiff is in the process of being set up.

As to the procedural history, on February 3, 2023, the City was served with the summons and complaint; however, upon information and belief, and upon a review of the docket sheet in this matter, to date, none of the individual defendants have been served. Thereafter, on or about April 24, 2023, plaintiff's counsel, Robert Rickner, informed the undersigned that plaintiff recently passed away. Accordingly, on April 24, 2023, pursuant to Rule 25(a) of the Federal Rules of Civil Procedure, defendants filed a suggestion of death and the ninety day deadline to file a motion to substitute parties is July 21, 2023.

Defendant City is now seeking an extension of time until July 24, 2023 to file their response to the complaint, which would be just after the current motion to substitute deadline. The reason for this request is because we are still not in possession of the documents regarding the underlying incidents. Moreover, in light of the anticipated motion for substitution that needs to be filed to continue this litigation, there is no prejudice to plaintiff if defendant City files its response to the complaint shortly thereafter.

Accordingly, defendant City respectfully requests an enlargement of time until July 24, 2023 to answer or otherwise respond to the complaint. Thank you for your consideration of the instant application.

Respectfully submitted,

Thomas Lai s/

Thomas Lai

Senior Counsel

Special Federal Litigation Division

To: **VIA ECF**
Stephanie Panousieris
Attorney for Plaintiff